

REMARKS

Claims 6, 13-22, 25-35, 38, 41-46 and 53-54 have been canceled without prejudice. Claims 2, 5, 37, 48 and 56 have been amended. Claims 1-5, 7-12, 23-24, 36-37, 39-40, 47-52 and 55-56 are pending and under consideration.

Claim Objections

The Examiner has objected to claims 2, 6, 37, 48 and 56 and requested that the claims be amended to more clearly identify the deposited biological material. Applicants have amended claims 2, 37, 48, and 56 in accordance with the Examiner's suggestion. Withdrawal of the objection is respectfully requested.

Claim Rejections 35 U.S.C. §112, first paragraph

The Examiner has rejected claim 6 under 35 U.S.C. §112, and states that while the specification is enabling for progeny of the bacteriophage deposited in ATCC #PTA-5075, the specification does not enable derivative recombinant forms or recombinant mutated forms of the bacteriophage deposited. Applicants have canceled claim 6 without prejudice. Withdrawal of the rejection under this section is respectfully requested.

The Examiner has rejected claims 2, 6, 37, 48, and 56 under 35 U.S.C. §112, first paragraph. The Examiner notes that page 4 of the specification indicates that the phages have been deposited; however, there is no indication in the specification as to publicly available. Applicants are filing herewith a Statement Regarding a Biological Deposit by the undersigned attorney indicating that bacteriophage deposited in ATCC #PTA-5075, deposited in accordance with the terms of the Budapest Treaty, will be irrevocably, and without restriction released to the public upon the issuance of a patent from the present application. In view of the Statement Regarding a Biological Deposit, Applicants respectfully request withdrawal of the rejection under this section.

Rejection under 35 U.S.C. §112, second paragraph

The Examiner has rejected claim 5 as being indefinite for not reciting proper Markush language. Applicants have amended claim 5 in accordance with the Examiner's suggestion. Withdrawal of the rejection is respectfully requested.

The Examiner has rejected claim 38 under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants have canceled claim 38 without prejudice. Withdrawal of the rejection is respectfully requested.

Allowed Claims

Applicants thank the Examiner for consideration and allowance of claims 1, 3-4, 7-12, 23-24, 36, 39-40, 47, 49-52 and 55.

CONCLUSION

In view of the above amendments, remarks and accompanying Statement Regarding a Biological Deposit, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 251-3509.

Respectfully submitted,

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